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KIMBERLY-CLARK WORLDWIDE, INC.			MATZEK, MATTHEW D	
Tara Pohlkotte			ART UNIT	PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARK G. REICHMANN, MAYA AROCH, JOY FRANCINE JORDAN, PETER MICHAILOVICH KOBYLIVKER, ROWLAND JAYNES MCCLELLAN, JR., ANN LOUISE MCCORMACK, PALANI RAJ RAMASWAMI WALLAJAPET, VASILY A. TOPOLKARAEV, DENNIS Y. LEE and STEVEN R. STOPPER

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Appeal 2009-006456  
Application 10/734,006  
Technology Center 1700

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Before TERRY J. OWENS, PETER F. KRATZ, and JEFFREY T. SMITH,  
*Administrative Patent Judges.*

KRATZ, *Administrative Patent Judge.*

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-5 and 10-28. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellants' claimed invention is directed to a biodegradable nonwoven web prepared from a polymer blend including aliphatic polyester polymer and polyalphaolefin polymer, the polymers having different thermal properties. The claimed invention also includes products including such a nonwoven web, a method of preparing the nonwoven web, and a fiber made of such a polymer blend.

Claim 1 is illustrative and reproduced below:

1. A biodegradable nonwoven web prepared from a polymer blend comprising from about 65% by weight to about 99% by weight of a biodegradable aliphatic polyester polymer and from about 1% by weight to about 35% by weight of a second polymer which is amorphous and is selected from the group consisting of a polymer having a lower melting point than the aliphatic polyester polymer, a polymer having a lower molecular weight than the aliphatic polyester polymer and mixtures thereof and wherein the second polymer comprises a polyalphaolefin.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Matsui	6,174,602 B1	Jan. 16, 2001
Fletcher	2002/0111596 A1	Aug. 15, 2002
Ryan	6,506,873 B1	Jan. 14, 2003

Claims 1-3 and 10-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsui in view of Fletcher. Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsui in view of Fletcher and Ryan.

As Appellants argue (Br.4-7), the Examiner has not discharged the burden of presenting a *prima facie* case of obviousness. Accordingly, we reverse the stated rejections.

Matsui is directed to spontaneously degradable fibers and products containing same, the fibers including a high crystalline aliphatic polyester component and a low crystalline or non-crystalline aliphatic polyester component (abs.; col. 2, l. 50 – col. 3, l. 67). Matsui teaches, *inter alia*, that the fibers can comprise a low crystalline polymer B1, such as a random caprolactone copolymer, including mixtures of block copolymers with the random copolymer (col. 8, ll. 5-20).

Fletcher is directed to an absorbent garment having removable side panels that can be reused with a disposable chassis portion of the garment (paras. 0006-0010). Fletcher teaches that an amorphous polyalphaolefin or poly-caprolactone can be used as a thin barrier coating layer on a water-dispersible material to repel liquids (para. 0078).

Regarding the Examiner's first stated obviousness rejection; the Examiner has determined that Matsui is silent about employing a polyalphaolefin polymer as part of a polymer blend as required by the appealed claims (Ans. 4).

The Examiner turns to Fletcher and argues that because Fletcher teaches polyalphaolefin and polycaprolactone are taught as alternative barrier coating materials of the flushable absorbent product of Fletcher, the use of polyalphaolefin as a functional equivalent for the polycaprolactone of Matsui would have been an obvious substitution to one of ordinary skill in the art at the time of the invention.

As correctly argued by Appellants; however, the Examiner has not established, in the first instance, that one of ordinary skill in the art would

have been led to employ polyalphaolefin as a functional equivalent to the optional poly-caprolactone copolymer portion of Matsui's multi-component, spontaneously degradable, fibers based on the distinct particularized thin barrier coating material utility for polyalphaolefin taught by Fletcher with a reasonable expectation of success in so doing (Br. 4-5). The Examiner has not persuasively articulated why Fletcher's use of polyalphaolefin as a thin barrier coating on one side of a water-dispersible material to form a weak enough structure to be dispersible [with the water-dispersible material] upon flushing with a considerable amount of water would have been instructive to one of ordinary skill in the art as to the functional equivalence of polyalphaolefin and polycaprolactone in forming multi-component spontaneously degradable fibers as taught by Matsui (Ans. 3-4; Matsui, col. 8, ll. 5-20; Fletcher, para 0078). After all, the rejected appealed claims call for polyalphaolefin as a polymer component of a multi-component polymer blend that is used as part of a fiber or formed into a non-woven web, a product containing such, or a method of making the non-woven web via forming the polymer blend using polyalphaolefin as a lower molecular weight component thereof. The appealed claims are not drawn to a barrier coating material for a flushable absorbent article.

Accordingly, we reverse the Examiner's obviousness rejection over Matsui in view of Fletcher.

The Examiner does not explain how the additional teachings of Ryan would make up for the aforementioned shortcomings in the Examiner's application of Matsui and Fletcher to the non-woven web required by claim 1 (Ans. 4-6). Thus, we reverse the Examiner's separate rejection of dependent claims 4 and 5.

**ORDER**

The Examiner's decision to reject claims 1-3 and 10-28 under 35 U.S.C. § 103(a) as being unpatentable over Matsui in view of Fletcher and to reject claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Matsui in view of Fletcher and Ryan is reversed.

**REVERSED**

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